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8
9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 BENNY GONZALES SEDANO,

16 Defendant

Case No. 2:18-CR-00012-WFN

Sentencing Memorandum

17 Plaintiff, United States of America, by and through William D. Hyslop,
18 United States Attorney for the Eastern District of Washington, and Timothy J.
19 Ohms, Assistant United States Attorney for the Eastern District of Washington,
20 submits the following Sentencing Memorandum.

21 I.

22 BACKGROUND

23 On January 27, 2018, the Defendant was indicted on one count of Felon in
24 Possession of Firearms and Ammunition and one count of Possession of an
25 Unregistered Firearm. ECF No. 1. On August 14, 2018, a Superseding Indictment
26 was filed that broadened the allegations in Count 1 to include that the Defendant
27 was also a Domestic Violence Misdemeanant and a Person Subject to a Restraining
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1 Order. ECF No. 18. On August 20, 2019, a Second Superseding Indictment was
2 filed to address issues stemming from the Supreme Court’s decision in *Rehaif v.*
3 *United States*, 588 U.S. ____ (2019). ECF No. 49. The Second Superseding
4 Indictment alleged the unlawful possession of 11 firearms (one of which was a short
5 shotgun that required registration under the National Firearms Act) and numerous
6 rounds of ammunition in various calibers from at least five different
7 manufacturers.

8 On October 22, 2019, the Defendant pled guilty to Count 1 of the Second
9 Superseding Indictment pursuant to a Plea Agreement. ECF No. 59. The offense
10 conduct in this case is outlined in the PSR ¶¶ 9-22 (ECF No. 62) and in the Plea
11 Agreement. ECF No. 59 at 5-8. The plea agreement bound the government to
12 recommend a sentence at the low end of the Guideline range as determined by the
13 Court.

14 II. 15 DISCUSSION

16 A. APPLICABLE LAW

17 In accordance with the Supreme Court’s decision in *United States v. Booker*,
18 543 U.S. 220 (2005), sentencing courts must engage in a two-step process when
19 imposing a sentence. The first step requires a court to calculate properly the
20 advisory Guidelines sentencing range. *See United States v. Cantrell*, 433 F.3d
21 1269, 1279-80 (9th Cir. 2006). A sentencing court should use this range as a
22 starting point for its assessment of an appropriate sentence. *Id.* The second step
23 requires a sentencing court to impose a “reasonable” sentence in light of all the
24 factors under 18 U.S.C. § 3553(a). *See United States v. Marcial-Santiago*, 447 F.3d
25 715, 717 (9th Cir. 2006); *United States v. Zolp*, 479 F.3d 715, 722 (9th Cir. 2007)
26 (the scheme of downward and upward departures is treated as essentially replaced
27 by the requirement that judges impose a “reasonable” sentence). A wide range of
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1 sentences may be deemed reasonable. *See United States v. Mohamed*, 459 F.3d
2 979, 989 (9th Cir. 2006) (“reasonableness is a range, not a point” (quoting *United*
3 *States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005))).

4 In fulfilling its responsibilities under 18 U.S.C. § 3553(a), the court is not
5 limited in the information that it may consider; rather, it may consider any
6 evidence that bears upon the defendant’s background, character, and conduct:

7 No limitation shall be placed on the information concerning the
8 background, character, and conduct of a person convicted of an offense
9 which a court of the United States may receive and consider for the
10 purpose of imposing an appropriate sentence.

11 18 U.S.C. § 3661. The information which the court may consider extends to prior
12 allegations for which no criminal charges were filed or for which a defendant was
13 previously acquitted. *United States v. Putra*, 519 U.S. 148 (1997).

14 Although *Booker* requires the court to consider the factors identified in
15 U.S.C. § 3553(a), that requirement “does not necessitate a specific articulation of
16 each factor separately, but rather a showing that the district court considered the
17 statutorily-designated factors in imposing a sentence.” *See Rita v. United States*,
18 551 U.S. 338 (2007); *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir.
19 2006). The factors a sentencing judge must consider are the nature and
20 circumstances of the offense, and the history and characteristics of the defendant.
21 The sentencing court must also consider the need for the sentence imposed to
22 reflect the seriousness of the offense; promote respect for the law; provide just
23 punishment; afford adequate deterrence to criminal conduct; protect the public
24 from further crimes of the defendant; and provide the defendant with needed
25 educational training, medical care, and other correctional treatment. A sentencing
26 court must also consider “the need to avoid unwarranted sentencing disparities
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1 among defendants with similar records who have been found guilty of similar
2 conduct.” 18 U.S.C. § 3553(a)(6).

3 2. Guideline Range:

4 Based on the PSR, the Defendant has an Adjusted Offense Level of 23, a
5 Criminal History Category of VI (based on 14 criminal history points), and an
6 advisory sentencing range of 92 to 115 months. PSR ¶¶ 38, 111, 212. The PSR
7 further notes that the probation officer found no factors “that would warrant a
8 departure from the applicable sentencing guideline range.” PSR ¶ 227.

9 3. Analysis of § 3553(a) Factors:

10 In evaluating the § 3553(a) factors, the court starts we start with the “nature
11 and circumstances of the offense,” and the “history and characteristics of the
12 defendant” under Subsection (a)(1).

13 The nature and circumstances of the offense in this case and serious and
14 weigh in favor of a Guideline sentence. Here, the Defendant has a lengthy and
15 serious criminal history that includes offenses with violent or threatening conduct,
16 controlled substance offenses, and property crimes. PSR ¶¶ 46, 52, 59, 69, 80, 85,
17 94, 99, 106. The Defendant’s history includes numerous failures to appear in court
18 and failures to comply with court orders. On separate occasions the Defendant has
19 received substantial state sentences of 48 months and 60 months. PSR ¶¶ 69, 106.
20 The Defendant also has numerous other arrests for serious offenses that did not
21 result in conviction, include residential burglary, assault, possession of a stolen
22 firearm, robbery, and six violations of no contact orders. PSR ¶¶ 123, 125, 129,
23 134, 136, 138, 146, 151. The Defendant was prohibited under federal law for
24 possessing any firearms or ammunition under three separate prohibited categories.
25 Despite this, the Defendant possessed multiple firearms and multiple rounds of
26 ammunition, and one of the firearms fell within the category of those needed
27 federal registration under the National Firearms Act. Based on this, the history and
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1 characteristics of the Defendant and the nature and circumstances of the offenses
2 both weigh in favor of a harsher sentence. Here, the government is not requesting a
3 “harsh” sentence but is requesting a Guideline sentence at the low end of the range.

4 In addition, the Defendant’s repeated violations of court orders demonstrates
5 the need for a sentence that will promote respect for the law. This weighs against a
6 sentence below the Guideline range. Similarly, the Defendant’s history of serious
7 violations of protection orders coupled with assaults, malicious mischief, and
8 harassment demonstrate a need to protect the public from further crimes of the
9 Defendant through incarceration and to deter the Defendant from committing
10 further crimes following his release from custody. To date, the Defendant has not
11 been deterred from further criminal conduct despite previously serving a state
12 sentence of 48 months. These factors further weigh against a sentence below the
13 low-end of the Guideline range. Given the absence of mitigating factors in this
14 case, a sentence below the low-end of the Guideline range may also promote
15 sentencing disparities with defendants similarly situated in other cases.
16

17 For the foregoing reasons and pursuant to the Plea Agreement entered in this
18 case, the government recommends that the Court impose a sentence at the low end
19 of the Guideline range, which the government believes to be 92 months.

20 Dated: January 9, 2020.

21 William D. Hyslop
22 United States Attorney

23 s/ Timothy J. Ohms
24 Timothy J. Ohms
25 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lorinda Meier Youngcourt

s/ Timothy J. Ohms

Timothy J. Ohms

Assistant United States Attorney